



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2022-0893, FRL-10419-02-R10]

Air Plan Approval; AK; Revisions to Ice Fog and Sulfur Dioxide Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Alaska State Implementation Plan (SIP) submitted on May 16, 2022. In the submission, Alaska revised and repealed State regulations originally put in place to limit water vapor emissions that may contribute to ice fog and to address the use of high-sulfur marine fuels near the communities of St. Paul Island and Unalaska. Alaska determined that the regulations are obsolete due to technology improvements and regulatory changes, including Federal sulfur content in fuel restrictions. The State requested that the SIP be updated to reflect the revised and repealed State regulations. We have determined the submitted revision will not interfere with attainment of the national ambient air quality standards or other applicable requirements of the Clean Air Act.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2022-0893. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or

please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kristin Hall (15-H13), EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle WA, 98101, (206) 553-6357, hall.kristin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we” or “our” is used, it means the EPA.

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I. Background

On May 16, 2022, Alaska submitted a SIP revision to the EPA. In the submission, the State revised and repealed certain air quality regulations and requested to update the federally approved SIP.¹ On May 24, 2023, we proposed to approve the submission (88 FR 33555). The reasons for our proposed approval are included in the proposal and will not be restated here. The public comment period closed on June 23, 2023. We received no comments on our proposed action and therefore we are finalizing our action as proposed.

II. Final Action

The EPA is approving and incorporating by reference the ice fog and sulfur dioxide related regulatory changes submitted by Alaska on May 16, 2022.² Upon the effective date of this action, the Alaska SIP will include the following regulations, State

¹ The submission also updated the State’s adoption by reference of Federal air quality standards and test methods codified at 18 Alaska Administrative Code (AAC) 50.035 and 18 AAC 50.040. We approved these adoption updates in a separate action on March 22, 2023 (88 FR 17159).

² The submission also updated the State’s adoption by reference of Federal air quality standards and test methods codified at 18 AAC 50.035 and 18 AAC 50.040. We approved these adoption updates in a separate action on March 22, 2023 (88 FR 17159).

effective April 16, 2022:

- 18 AAC 50.025 Visibility and other special protection areas (establishing geographic areas that may need additional pollution control because of special circumstances);
- 18 AAC 50.502 Minor permits for air quality protection (establishing which types of stationary sources must obtain minor construction and/or operating permits);
- 18 AAC 50.540 Minor permit: application (outlining the required contents of an application for a minor construction and/or operating permit); and
- 18 AAC 50.542 Minor permit: review and issuance (establishing the process the state uses to review permit applications from sources, conduct public notice and comment, and issue permits).

The EPA is also approving Alaska's request to remove the following regulation from incorporation by reference:

- 18 AAC 50.080 Ice fog, State effective January 18, 1997 (regulating water vapor emissions from industrial sources that may form ice fog).

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Alaska regulatory provisions described in section II of this preamble and set forth in the amendments to 40 CFR part 52 in this document. The EPA has made, and will continue to make, these materials reasonably available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as

of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³

The EPA is also finalizing the removal of 18 AAC 50.080 Ice fog, State effective January 18, 1997, as described in section II of this preamble, from the Alaska SIP, which is incorporated by reference under 1 CFR part 51.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

³ 62 FR 27968 (May 22, 1997).

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State air agency did not evaluate environmental justice considerations as part of its SIP submission; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. Consistent with the EPA’s discretion under the Clean Air Act, the EPA evaluated environmental justice considerations as described in our proposed action on May 24, 2023 (88 FR 33555). Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record inconsistent

with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA offered the Qawalangin Tribe of Unalaska and the Aleut Community of St. Paul Island the opportunity to consult on a government to government basis prior to this action in letters dated March 14, 2023. We received no consultation or coordination requests prior to this action.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 1, 2023.

Casey Sixkiller,
Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION
PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Alaska

2. In § 52.70, paragraph (c), table 1 is amended by:

- a. Revising the entry “18 AAC 50.025”;
- b. Removing the entry “18 AAC 50.080”; and
- c. Revising the entries “18 AAC 50.502”, “18 AAC 50.540”, and “18 AAC 50.542”.

The revisions read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

TABLE 1 TO PARAGRAPH (C)—EPA-APPROVED ALASKA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
18 AAC 50—Article 1. Ambient Air Quality Management				
*	*	*	*	*
18 AAC 50.025	Visibility and Other Special Protection Areas	5/16/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
*	*	*	*	*
18 AAC 50—Article 5. Minor Permits				

18 AAC 50.502	Minor Permits for Air Quality Protection	5/16/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
*	*	*	*	*
18 AAC 50.540	Minor Permit: Application	5/16/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
18 AAC 50.542	Minor Permit: Review and Issuance	5/16/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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[FR Doc. 2023-16796 Filed: 8/8/2023 8:45 am; Publication Date: 8/9/2023]